*Water Act**

ADMINISTRATIVE GUIDELINE FOR TRANSFERRING WATER ALLOCATIONS

Revised August 26, 2003

*References to legislation and regulations cited are based on content on the issue date of this guideline Up-to-date information on amendments or other changes is available from the Alberta Queen's Printer and Alberta Environment The original act and Regulations should be consulted for all purposes of interpreting and applying the law.

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Preamble

Provisions under the *Water* Act (the "Act") and the *Water (Ministerial) Regulation* (the "Regulation") allow for the transfer of an allocation of water under a licence (the "transfer"). A transfer can only be considered where water is allocated under a licence and where an approved water management plan is in place that allows transfers, or through an order of the Lieutenant Governor in Council that authorizes the ability to transfer.

Under the predecessor legislation, the *Water Resources Act* ("the WRA"), water allocated under a licence was attached to the land and passed to new landowners whenever the land was sold. Although, the WRA did allow for limited transfers, this provision was rarely used. The *Water Act* now contains the legal framework to allow a person to sever the allocated water from the land and apply it to another parcel of land if the application for transfer is approved.

The transfer provision allows for all or part of an existing water allocation to be transferred from an existing licence holder to another person or corporation for use in a new location permanently or for a fixed period of time. Along with the volume of the water allocation, the priority of the existing allocation is also transferred.

Guideline Intent

This guideline provides information and a methodology for dealing with applications for transfer of an allocation of water under a licence. The intent is to ensure transfers are handled in a consistent manner across the province. It will also provide assistance to those who are contemplating the transfer of an allocation of water.

Water Act

The Act provides the necessary legislative tools to consider transfers.

Table 1 lists the various provisions in the Act and Regulation relating to transfers, assignments and amendments:

Table 1

Water Act

Heading	Section
Approved water management plan	11(3)(a)(iv)(B), 11(3)(b)(ii)
Environmental assessment requirements	16(1)
Ministerial orders	17(a)
Agreements to assign water	33
Approvals, licences, transfers, registrations not available	34(1)(c), 34(1)(d)(i), 34(1)(d)(ii), 34(1)(g), 34(2)
Amendments	54(1)(a)(ii)
No transfer between basins	47
Transfer application	81
Transfer approved, licence issues	82
Water conservation holdback	83
Notice of applications	108(1)(e), 108(5)
Notice of Director's decision	110(5), 111(6)
Notice of appeal	115(1)(r), 115(2)(a)(ii)
Regulations	169(2)(tt)

Other legislative tools to be considered prior to a transfer include approved water management plans such as the South Saskatchewan River Basin Water Management Plan Phase One. Approved water management plans for other basins, to date, have not yet been passed in accordance with Section 81 of the *Water Act*.

Definitions

- **Assignment** means a licensee or registrant in good standing has temporarily contracted all or part of his/her water allocation with another licensee or registrant in good standing, who is able to access the same water as a result of the natural flow or natural presence of the water without adversely affecting other water users or the aquatic environment.

- **Contiguous Land-ownership Unit** means all lands associated with the farm or business physically linked, including lands separated by a road, canal, water body, road allowance or rail line, but not lands separated by land owned by another person. Physically linked also includes lands diagonally opposite the corner of an intersection (e.g. the northeast and the southwest quarter sections). *(NOTE: The principle of contiguous land ownership is included to provide a means for licensees who own several parcels of land next to the land described in the licence to change their point of diversion or point of use by amending the licence, instead of invoking the transfer provisions.)*

- **Licence in Good Standing** means a licence not suspended, cancelled, expired or that is not in compliance with the terms and conditions of the licence.

- **Permanent Transfer** means part or all of the allocation of water is transferred and does not revert back to the original licensee.

- **Temporary Transfer** means part or all of the allocation of water is transferred for a specified period of time. The allocation of water will be returned to the original licensee after the agreed period of time.

- **Transferee** means the person receiving a transfer of an allocation of water.

- **Transferor** means the person who holds a licence and is prepared to transfer part or all of an allocation of water from the licence.

Criteria for Determining a Licence in Good Standing

A licence must be determined to be in good standing before an application for transfer can be considered. Further specifics on the factors considered in determining in good standing can be found in Appendix F.

The Act allows for some changes to licences or the operation of licences, through assignments and amendments, without invoking transfer provisions.

Agreements to Assign Water

To provide flexibility for water users, Section 33 of the Act allows licensees and registrants to temporarily contract all or part of their water allocation. Agreements to assign water are different from transfers because agreements do not result in a licence being issued for the assigned allocation, and agreements can **only** occur between existing licensees or registrants.

Amendment Provision

Section 54 of the Act provides the Director with a means to amend an existing licence. This may be used in some situations instead of having to do a transfer. Amendments may include a change in the point of use or the diversion point of a licence where the change takes place within the contiguous land-ownership unit. A transfer would not be necessary in these circumstances. *(See Tables 2 and 3 for further information).*

Authorization of Transfers

Applications for transfer cannot be considered unless the ability to transfer is authorized in an approved water management plan or unless a Lieutenant Governor in Council Order is issued.

The South Saskatchewan River Basin Water Management Plan Phase One Water Allocation Transfers is representative of a plan, which authorizes transfers. See Appendix B for an excerpt of the transfer provisions in the South Saskatchewan River Basin Water Management Plan.

Application Submission

The following documentation is required for a transfer to be considered:

- Application under the *Water Act* for Transfer of an Allocation of Water Under a Licence (Form TWA1)
- A recent certificate of title for all parcels of land involved in the transfer – including titles for lands under the transferor's licence and lands associated with the transferee's proposed project
- Written consent from the landowner if the transferee is not the owner of the new lands
- Written consent from the landowner if the existing licence is in a different name
- A copy of the licence from which the transfer is to be made
- A plan showing the layout of the new works, including point of diversion, point of use, a detailed description of the works and water requirement and an agricultural feasibility report, if irrigation is involved; (See "Guideline for Preparing Agricultural Feasibility Reports for Irrigation Projects")
- the Department may prescribe a licence fee which shall be paid before the issue of a licence. *(See Appendix E)*
- Other information as required by the Director.

Note Any document submitted to the Department is a public document under Section 15 of the Water (Ministerial) Regulation.

Application Review

Transfers will be subject to a review process similar to new licence applications under the Act. If the original licence is in good standing, and it is in an area where an approved water management plan or an Order of the Lieutenant Governor in Council, authorizes transfers, the application will be reviewed. The review may include the following considerations:

1. any existing, potential or cumulative effects
   a. on the aquatic environment and any applicable water conservation objective;
   b. hydraulic, hydrological and hydrogeological effects;
   c. effects on household users, traditional agriculture users and other licensees;
2. effects on public safety;
3. with respect to irrigation, the suitability of the land to which the allocation of water is to be transferred;
4. allocation of water that the licensee has historically diverted under the licence; and
5. any other matters that may be considered relevant.

Also, the application

- may be referred to other agencies having an interest in the transfer for comment
- will require a public notice
- is subject to a public review as appropriate for the issues identified.

In considering a transfer application, the Director must consider any matters or factors referenced in an applicable approved Water Management Plan.

Examples of Transfers/Assignments/Amendments

Tables 2 and 3 indicate the type of transfer, assignments or amendments required for various situations. It should be noted, in some instances, only an amendment of the existing licence is required.

Table 2
Aquifer Water Sources

Type of Transfer/ Assignment/Amendment	Is Change Permitted?	Licensing Requirements	Required Legal Documentation	Comments
1 Construction of a replacement well	Yes (by amendment)	• Licence and plan are amended	N/A	• New well must be drilled in same aquifer • No impact to other groundwater users or users between the wells • Original well must be properly sealed if abandoned
2 Construction of supplementary well(s)	Yes (by amendment)	• Licence and plan are amended to indicate another well	N/A	• New well must be in same aquifer as existing well • Allocation of water must be shared between the old and new well • Water diversion shall not exceed the allocation on the licence
3 Move water allocation from the licensed well to a new well in a different aquifer	No	N/A	N/A	• Proponent needs to apply for a licence
4. Move water allocation from the licensed well to a new well within the same aquifer	Yes (by amendment)	• Licence and plan are amended	N/A	• Change can only take place within the contiguous land-ownership unit • Existing well must be properly sealed if abandoned
	Yes (by transfer)	• New licence issued • Old licence is cancelled if total allocation is transferred	• approved Water Management Plan, • or Order in Council	• If outside the contiguous land-ownership unit • Existing well must be properly sealed if abandoned
5 Change water allocation from aquifer source to surface water when there is a hydraulic connection	Yes (by amendment)	• Licence and plan are amended	N/A	• Change can only take place within the contiguous land-ownership unit • Existing well must be properly sealed if abandoned
	Yes (by transfer)	• New licence • Old licence is cancelled if total allocation is transferred	• Approved Water Management Plan, • or Order in Council	• If outside the contiguous land-ownership unit • Existing well must be properly sealed if abandoned
6 Change water allocation from	No	N/A	N/A	• Proponent needs to apply for a new

groundwater to surface water when there is no hydraulic connection				licence

Table 3
Surface Water Sources

Type of Transfer/ Assignment/Amendment	Is Change Permitted?	Licensing Requirements	Required Legal Documentation	Comments
1 Change in point of diversion or adding another point of diversion	Yes (by amendment) Yes (by transfer)	• Licence and plan are amended • New licence • Old licence is cancelled	N/A • Approved Water Management Plan, or • Order in Council	• Change can only take place within the contiguous land-ownership unit • Change must be on same water body • If outside the contiguous land-ownership unit • Must remain within the same major river basin boundary
2 Change in point of use, but no change in diversion point	Yes (by amendment)	• Licence and plan are amended	N/A	• There are no restrictions on changing the point of use as long as it remains within the major river basin • If outside the major river basin, a special Act of the legislature is required. See Section 47 of the Act • Agricultural Feasibility Report and plan may be required for irrigation projects
3 Change in purpose of use	Yes (by amendment)	• Licence and plan are amended if necessary	N/A	• There are no restrictions on the change in purpose of use, except if there is a change in mode of operation or change in timing of withdrawals as stipulated in the licence
4 Assigning an allocation of water	Yes (by assignment)	• No change to licence conditions • Receiving licensee or registrant operates under his/her licence conditions	• Written agreement between licensees or registrants • Assignor's licence or registration must be in good standing • Recipient must hold a licence or registration in good standing	• The assignment is subject to Section 33 of the *Water Act*. • No other water users or the aquatic environment may be adversely affected by the assignment.

5	Moving diversion point to another water body where there is no hydraulic connection with the licensed water source	No			• Proponent must apply for new licence • Because a transfer to a separate water body would have a senior priority to the most recent priority on the new water body, it would negatively affect the existing licensees
6	Moving diversion source from surface water to groundwater where there is a hydraulic connection	Yes (by amendment) Yes (by transfer)	• Licence and plan are amended if necessary • New licence Old licence is cancelled	N/A	• Change must take place within the contiguous land-ownership unit • Well must not be drilled to a depth exceeding the water-bearing strata connected to the surface water body. • If outside the contiguous land-ownership unit • Well must not be drilled to a depth exceeding the water-bearing strata connected to the surface water body • Must remain within the same major river basin boundary
7	Moving water allocation from surface water to groundwater where there is no hydraulic connection	No	N/A	N/A	• Proponent needs to obtain a licence • Any transfer where there is no hydraulic connection would impair the exercise of rights of existing household and traditional agriculture users or licensees.

Public Review of a Proposed Transfer

When an application and supporting information are received and the Director considers the application complete, the Director must conduct a public review (see Section 81(6) of the Act) with respect to the transfer application. The Director determines the form and manner of review with consideration of the scope of impacts and issues within the proposed transfer. Notice of the application must also be provided in accordance with Section 108(1)(e) of the Act. A sample notice is provided in Appendix C. A sample of public review guidelines is provided in Appendix D.

Licence and Approval Issuance

A transfer may be approved if it does not impair the exercise of rights of any household user, traditional agriculture user or other licensee other than the household user, traditional agriculture user or other licensee who has agreed in writing that the transfer of the allocation may take place. Additionally, a transfer may be approved if it has no significant adverse effect on the aquatic environment.

Where an application for transfer is approved, the Director may decide to issue an approval, with conditions, for any instream construction of new works. The approval holder will be allowed a specified

period of time for the construction of works. Once the works are completed, the approval holder shall submit a Certificate of Completion, certifying the construction activity is complete.

Licences may include conditions requiring the licensee to submit water monitoring data, quantities of water diverted, investigation of users impacted by the licensee's diversion and monitoring of nearby sources. The new licence will retain the priority number assigned to the existing licence from which the allocation was transferred. The conditions of the existing licence may be modified if it is necessary to mitigate the impact of the transfer on others. The licence will be issued with an expiry date as per Section 12 of the Water (Ministerial) Regulations.

Depending on the type of transfer, the original licence will be amended if part of an allocation was transferred or if it is a temporary transfer. The original licence will be cancelled if all of the allocation was permanently transferred.

Water Conservation Holdback

To protect the aquatic environment or to implement a water conservation objective, the Director may consider withholding up to 10% of an allocation of water being transferred if it is in the public interest. The amount of holdback may be defined in an Approved Water Management Plan or an Order of the Lieutenant Governor in Council. The holdback is applicable to permanent and temporary transfers of surface water and aquifer sources. Any water held back may be licensed to the Government of Alberta to protect the aquatic environment or to implement a water conservation objective. Any licence issued will bear the same priority number as the original licence.

Example 1: A licence has an allocation volume of 100,000 cubic metres (m^3) and a diversion rate of 1cubic metre per minute and the entire amount is to be transferred: if a water conservation holdback of 10% is applied, then the transfer licence (new licence) will have an allocation volume of 90,000m^3 and a diversion rate of 0.9 cubic metres per minute.

Example 2: A licence has an allocation of 100,000m^3 and only 50,000m^3 is to be transferred. The Director decides a holdback of 10% is required for instream needs. The original licence will be reduced to 50,000m^3, the transfer licence (new licence) will have an allocation of 45,000m^3 and the holdback will be 5000m^3. The 10% holdback is applied only to the actual amount being transferred (e.g. 50,000m^3) and not the entire allocation of 100,000m^3. The diversion rate is also prorated.

Example 3: A licence has an allocation of 100,000m^3 and only 50,000m^3 is to be transferred on a temporary basis. The Director decides a holdback of 10% is required for instream needs The original licence will be reduced to 50,000m^3, the temporary transfer licence will have an allocation of 45,000m^3 and the holdback will be 5000m^3. When the temporary transferred allocation is no longer required, only the 45,000m^3 will be returned to the original licensee (Transferor) and the total allocation on the original licence will be 95,000m^3. The diversion rate is also prorated.

Appeals

Decisions made on transfer applications are appealable to the Environmental Appeal Board. The applicant and any directly affected person who submitted a statement of concern during the notice period can submit an appeal.

Questions and Answers:

The following questions may be asked regarding transfers:

Table 4A

Administrative Questions

	Question	Answer
1	Can a transfer include a change in purpose?	Yes, but careful consideration must be given where timing of withdrawal or mode of operation as stipulated in the original licence is proposed to change If the new purpose would take water at a time that is different from the original licence, any impacts would have to be mitigated.
2	Can a licensee divide a water allocation and transfer parts of the allocation to more than one applicant?	Yes, more than one licence may be issued and each licence will retain the existing priority number. The sum of the water allocation will not exceed the original volume
3.	Can a temporary diversion licence ("TDL") be issued if the transfer is of a temporary nature?	No, temporary transfers are handled under Section 82. A TDL does not have a priority number and is not transferable
4	What area of land can be irrigated after an allocation of water has been transferred?	A licence can be amended to specify a variable number of acres. The volume is constant
5.	Can an allocation of water be transferred where the transferee does not own the land?	Yes, but the landowner must agree to the transfer - the transferee must submit, with a transfer application, written consent from the landowner shown on the certificate of title
6	Can the Director include new conditions in the transfer (new) licence?	Yes, the Director has discretion to include new conditions in the new licence
7	What are the Freedom of Information and Privacy Act ("FOIP") issues surrounding licences and transfer?	The application submission and any licence issued are public documents, so the FOIP implications in the matter of transfers are the same as any other file.
8	If licensees cannot find their licences, can they obtain a copy from the department?	Yes, the department will provide a copy
9	Can an allocation of water be transferred more than once?	Yes, if a new licence is issued and is not for a temporary transfer, it could be subject to another transfer application and holdback provisions An allocation that has reverted back to a transferor could also be subject to another transfer application and holdback provisions

Table 4B

Financial Questions

1.	Can a cash payment or gift be made instead of implementing the water conservation holdback from a transfer?	No, the holdback provision is required to protect the aquatic environment or implement a water conservation objective
2	Can the Government of Alberta apply for a transfer of allocation of water for water conservation objective purposes?	Yes, the Government of Alberta may apply for a transfer and acquire a water allocation and use the water for a water conservation objective licence
3	Does the department have any control on the price of the transfer agreed to by the transferor and the transferee?	No, all financial arrangements, if any, or any other reasons for transferring are strictly between the two parties
4.	Are there any application and/or licence fees for transferring an allocation of water?	A one time licence fee may apply when the new licence is issued (See Appendix E for licence fee schedule) There is no application fee

Table 4C

Cancellation Questions

1	What happens when a transferee, who entered into a permanent or temporary transfer agreement, does not use any of the water allocation?	If there has been no diversion of any of the water allocated for a period of 3 years the Director may consider cancelling the licence for non-use of water. See Section 55(1)(f) of the Act for further information
2	Can the lack of use or non-use of water be considered during the review of an application for transfer?	Yes

Table 4D

Instream or Holdback Questions

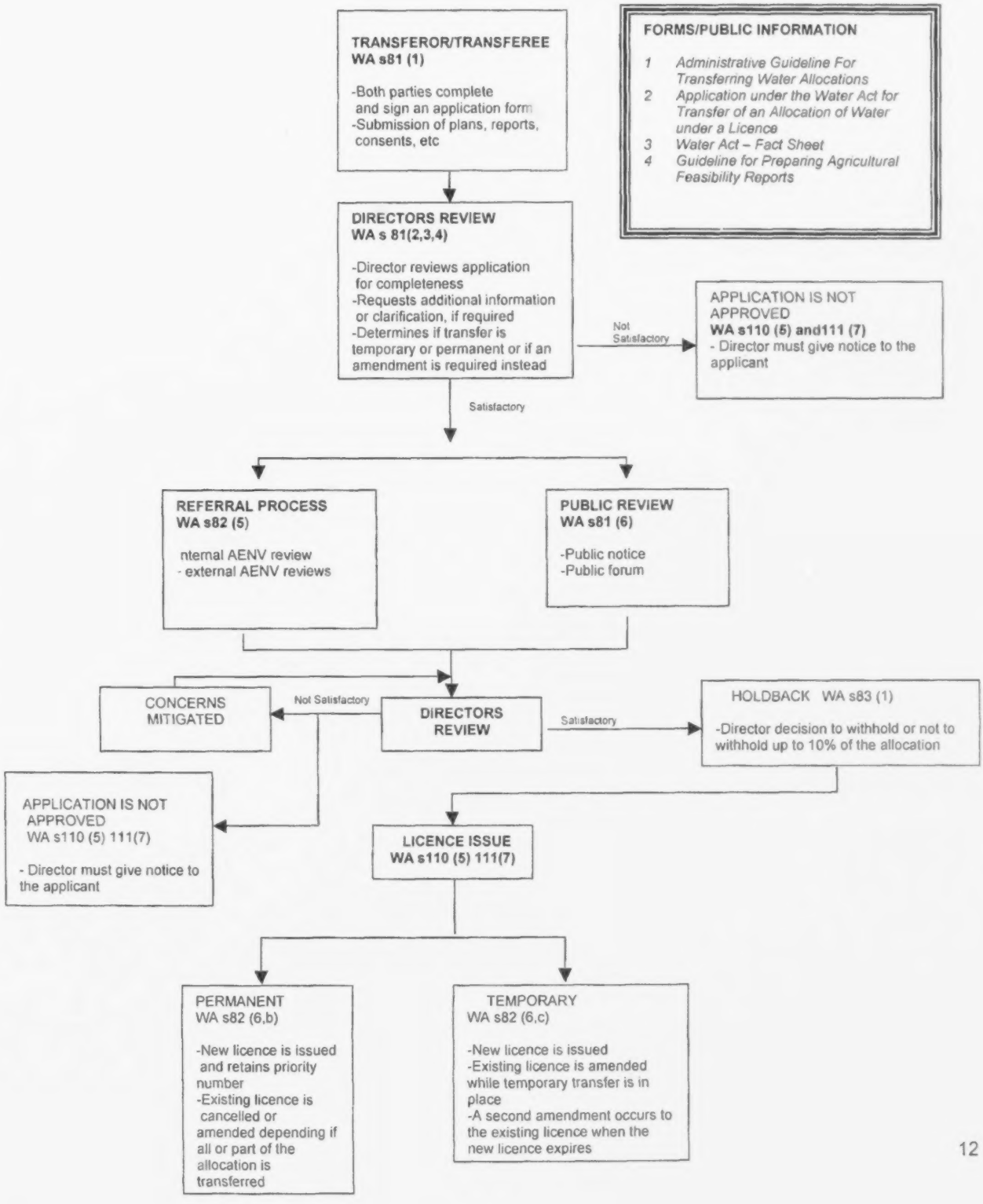
1	What happens to the water that is heldback?	The holdback water could remain in the water source, could be protected by a reservation or could be a licence, with the same priority, issued to the Government of Alberta for implementing a water conservation objective
2	Can holdback water be re-allocated to a water use (not instream)?	Yes, the water could be re-allocated if new licences are still being issued in that river basin, although the 10% holdback is only taken when a Water Conservation Objective is identified and not being met, which suggests the basin would be closed to new licences
3.	Can an entire allocation be transferred to instream uses on a permanent or temporary basis?	Yes. It can be transferred to the Government of Alberta to hold in a water conservation objective licence
4	Can holdback water be transferred to an environmental agency for instream use?	No, only the Government of Alberta can hold holdback water in a licence from a transfer

Table 4E
General Transfer or Assignment Questions

1	Can existing licensees (e.g municipality, irrigation district, industry or individual) obtain transfer allocations of water to meet their increased needs?	Yes
2	Can licences, issued under the *South Saskatchewan Basin Water Allocation Regulation*, be transferred from the designated project area?	Yes, water allocated to a particular project area defined in the *South Saskatchewan Basin Water Allocation Regulation* may be transferred outside the defined project area, as long as all other requirements regarding transfers are met
3.	Can an irrigation district transfer part of its allocation outside of the district?	Yes, the irrigation district board is at liberty to transfer part or all of their water allocation out of the district
4.	Can a licensee assign part of his/her water allocation to someone who does not have a licence or registration?	No, a licensee or a registrant can only assign water to another licensee or registrant
5.	How much allocation can be transferred if the historical net diversion has been much less than the total allocation?	The Director may consider transferring only an amount equal to the historical net diversion
6	What happens to the works at the original site of the licence?	Decommissioning of works may be required and may be subject to an application for an approval if activity in a watercourse is required to remove the works

APPENDIX A

TRANSFERRING WATER ALLOCATIONS
FLOW CHART – TRANSFER DECISION PROCESS


TRANSFEROR/TRANSFEREE
WA s81 (1)
-Both parties complete and sign an application form
-Submission of plans, reports, consents, etc
FORMS/PUBLIC INFORMATION
1 Administrative Guideline For Transferring Water Allocations
2 Application under the Water Act for Transfer of an Allocation of Water under a Licence
3 Water Act – Fact Sheet
4 Guideline for Preparing Agricultural Feasibility Reports
DIRECTORS REVIEW
WA s 81(2,3,4)
-Director reviews application for completeness
-Requests additional information or clarification, if required
-Determines if transfer is temporary or permanent or if an amendment is required instead
Not Satisfactory
APPLICATION IS NOT APPROVED
WA s110 (5) and111 (7)
- Director must give notice to the applicant
Satisfactory
REFERRAL PROCESS
WA s82 (5)
nternal AENV review
- external AENV reviews
PUBLIC REVIEW
WA s81 (6)
-Public notice
-Public forum
CONCERNS MITIGATED
Not Satisfactory
DIRECTORS REVIEW
Satisfactory
HOLDBACK WA s83 (1)
-Director decision to withhold or not to withhold up to 10% of the allocation
APPLICATION IS NOT APPROVED
WA s110 (5) 111(7)
- Director must give notice to the applicant
LICENCE ISSUE
WA s110 (5) 111(7)
PERMANENT
WA s82 (6,b)
-New licence is issued and retains priority number
-Existing licence is cancelled or amended depending if all or part of the allocation is transferred
TEMPORARY
WA s82 (6,c)
-New licence is issued
-Existing licence is amended while temporary transfer is in place
-A second amendment occurs to the existing licence when the new licence expires

APPENDIX B

Sample Authorizations for Transfer in an Approved Water Management Plan (Direct excerpt from South Saskatchewan River Basin Water Management Plan Phase 1)

B. AUTHORIZATIONS

The* Water Act *requires that certain of its provisions be authorized in an* Approved Water Management Plan, *or by order of the Lieutenant Governor in Council, before they can be utilized. This section provides the required authorization for the Director to consider applications for water allocation transfers and to utilize water conservation holdbacks

1. Authorization of water allocation transfers

The Director (as designated under the *Water Act*) is hereby authorized to consider applications to transfer water allocations under licences in the SSRB in Alberta, subject to sections 81, 82 and 83 of the *Water Act*.

2. Reviews of applications for water allocation transfers

The factors which must be considered by the Director with authority for sections 81, 82 and 83 of the *Water* Act, when reviewing applications for transfers of allocations of water under licences in the SSRB, are listed in Table 1 (page 10). Consideration of these matters will help to ensure that, if approved, transfers will improve the ability to manage water without unacceptable impacts on people or the aquatic environment. The factors listed are functions of the effects that may result from changes in the rate, volume and timing of water diversions resulting from transfers.

Criteria for approval of transfer of water allocation are also included in Table 1 (page 10). These provide the standards that are to be met in the consideration of the factors for which criteria are stated.

The *Water Act* (81(6)) requires that there be public review of proposed transfers. Also, the applicant for a transfer must provide notice and statements of concern can be submitted by directly affected parties.

Table 1. Factors that must be considered in reviewing an application for a transfer of an allocation of water under a licence in the SSRB:

Factor	Criteria for approval
Existing, potential and cumulative effects on the aquatic environment and any applicable instream objective and/or water conservation objective	• No significant adverse effect on the aquatic environment resulting from the transfer • No significant adverse effect on existing instream objectives or water conservation objectives resulting from the transfer
Existing, potential and cumulative hydraulic, hydrological and hydrogeological effects	-
Existing, potential and cumulative effects on household users, traditional agriculture users and other higher and lower priority licensees	• From the *Water Act*, Section 82(3)(b): *the transfer of the allocation, in the opinion of the Director, does not impair the exercise of rights of any household user, traditional agriculture user or other licensee other than*

	household user, traditional agriculture user or other licensee who has agreed in writing that the transfer of the allocation may take place
With respect to irrigation, the suitability of the land to which the allocation of water is to be transferred for irrigated agriculture	• The land must be suitable for irrigated agriculture: Class 4 or better in accordance with the standards of Alberta Agriculture, Food and Rural Development
The historic volume, rate and timing of the diversion under the original licence	-
The volume, rate and timing of the diversion under the proposed new licence	-
Location of the existing diversion and the proposed new diversion	-
Water quality (including public health and safety and assimilative capacity)	• No significant adverse effect on public health and safety or assimilative capacity
The linkages between surface and ground water and the effects or changes in the overall system of water use	• No significant adverse effect on groundwater quantity or quality
Existing, potential and cumulative effects on the operations of reservoirs or other water infrastructure	• No significant adverse effects on operations unless operations can be satisfactorily adjusted to mitigate the effects
Current conditions on the licence from which water is to be transferred	• In the case of a transfer of part of an allocation, there will be no adjustments to the current conditions on the part of the allocation that is not being transferred, unless necessary to give effect to the transfer
Master Agreement on Apportionment (Alberta's commitments to Saskatchewan)	• The terms of the *Apportionment Agreement* will be respected
The *Water Act* (82)(5)(c)(iv) also provides that the Director *may consider any other matters applicable to the transfer of the allocation that the Director considers relevant.*	

3. Authorization of water conservation holdbacks

Section 83(1) of the *Water Act* reads as follows:

> *If the Director is of the opinion that withholding water is in the public interest to protect the aquatic environment or to implement a water conservation objective, and the ability to withhold water has been authorized in an applicable approved water management plan or order of the Lieutenant Governor in Council, the Director may withhold up to 10 per cent of an allocation of water under a licence that is being transferred.*

The Director is hereby authorized to withhold up to 10 per cent of an allocation of water under a licence that is being transferred, if the Director is of the opinion that withholding water is in the public interest to protect the aquatic environment or to implement a water conservation objective.

APPENDIX C

EXAMPLE

PUBLIC NOTICE

[name of applicant]

WATER ACT

Notice is given that [name of applicant] filed an application to [permanently or temporarily] transfer [1] cubic metres of water under a licence issued to divert water from [source of supply and point of diversion noted on the licence] to [proposed point of diversion] on the [water body name]. The allocation of water to be transferred was licensed to [name of existing licensee] on [date] for a total allocation of [2] cubic metres. The (type) purpose of the water use (either remains unchanged or will be changed to)____ purpose. Under Section 83 of the *Water Act*, the Director may withhold [3] cubic metres (10%) of the allocation of water being transferred. Any water withheld may be licensed to the provincial Government for protection of the aquatic environment or implementation of a water conservation objective.

Any person who is directly affected by this application may submit a statement of concern to:

Alberta Environment
[6] Region
[7]

Phone:
Fax:

within 30 days of the providing of this notice. Please quote File No. [8].

In accordance with Section 81(6) of the *Water Act*, a public review of this application must be conducted. As part of the public review, the applicant will hold an open house at [name of facility] on [date] between the hours of [4] and [5] inclusive.

Further information regarding this project can be obtained from:

(Insert applicant's contact information here)

Statements filed regarding this application are a public record, which is accessible by the public.

Failure to file statements of concerns affects a person's right to file a notice of appeal with the Environmental Appeal Board.

APPENDIX D

Sample of
Public Review of a Transfer Application
(Water Act Section 81(6))

Notice of Public Review

1. The applicant may be required to publish a Director-approved notice for applications involving construction activities with potential local impact. The notice shall be published in a local newspaper in which the municipality normally publishes development notices.

and

2. The applicant may be required to publish a Director-approved notice in a regional newspaper for applications that may have a regional impact beyond the municipal boundary in which the project transfer is located, such as basin water management issues.

For all applications the public notice shall be published in the format as instructed by the Director. Payment of publication fees is the responsibility of the applicant.

Public Open House

3. The applicant shall host and pay all costs associated with an open house for public input. Notice of the open house shall be published at least 2 weeks in advance and the open house shall be hosted at least one week before the end of the published notice period as stated in the Public Notice. Documents describing the proposed transfer must be on display at the open house for a minimum of 2 hours during normal office hours and a minimum of 2 hours during evening hours. The open house must be attended by at least one informed representative of the prospective transferee.

4. At the completion of the review process the applicant shall provide a public consultation summary report to Alberta Environment. The report shall include the concerns raised at the open house as well as the concerns raised by the statement of concern filers.

5. The Director may require additional public reviews or other forms of public reviews as considered appropriate.

Note: A public open house may not be required for transfers where the Director is of the opinion that a public open house is not required. (eg: small projects involving moving a short distance on the same stream without a change in ownership or purpose, or diversion timing). Other forms of public review may be more appropriate.

APPENDIX E

WATER ACT
LICENCE FEE SCHEDULE

The licence fee shall be paid for each licence issued and shall be as follows:

Water Allocation in Cubic Metres (m^3)	$ Fee
0 – 62,500 m^3	Nil
62,501 – 75,000 m^3	$ 90.00
75,001 – 87,500 m^3	$ 105.00
87,501 – 100,000 m^3	$ 120.00
100,001 – 112,500 m^3	$ 135.00
112,501 – 125,000 m^3	$ 150.00
125,001 – 250,000 m^3	$ 225.00
250,001 – 375,000 m^3	$ 300.00
375,001 – 500,000 m^3	$ 375.00
500,001 – 625,000 m^3	$ 450.00
625,001 – 750,000 m^3	$ 525.00
750,001 – 875,000 m^3	$ 600.00
875,001 – 1,000,000 m^3	$ 675.00
1,000,001 – 1,125,000 m^3	$ 750.00
1,125,001 – 1,250,000 m^3	$ 825.00
1,250,001 – 2,500,000 m^3	$ 900.00
2,500,001 – 3,750,000 m^3	$ 975.00
3,750,001 – 5,000,000 m^3	$ 1,050.00
5,000,001 – 6,250,000 m^3	$ 1,125.00
6,250,001 – 7,500,000 m^3	$ 1,200.00
7,500,001 – 8,750,000 m^3	$ 1,275.00
8,750,001 – 10,000,000 m^3	$ 1,350.00
10,000,001 – 11,250,000 m^3	$ 1,425.00
11,250,001 – 12,500,000 m^3	$ 1,500.00
12,500,000 m^3	$ 1,500.00 plus $15.00 for each additional 125,000 m^3 or portion thereof over 12,500,000 m^3

APPENDIX F

Certification for Licence In Good Standing

1. Is there a licence?

Attach copy of licence, approved plans and amendments, to establish all the boundaries of the water right. To whom was the licence first issued? Has the licence been amended to reflect a new owner? If not, the licence is not in good standing. Has the Department received notification of a new owner? Are there any licence amendments that should be attached to the licence? Is the licence tied to other files, works or licences and what is the connection?

2. Is the licence expired?

If the licence is expired, the licence is not in good standing. See Section 59 of the Water Act as part of this determination. Provide comment.

3. (a) Is the licence currently under suspension?

Has suspension been initiated prior to "in good standing" determination? If yes, the licence is not in good standing. Provide comment and attach a copy of the most recent correspondence/decision.

3. (b) Is the licence currently being considered for cancellation?

Has a cancellation notice been sent to the licensee? If yes, the licence is not in good standing. Provide comments and attach a copy of the most recent correspondence/decision.

4. (a) Is the licence currently subject to an Investigation, a Water Management Order or an Enforcement Order?

Obtain written confirmation of the above from the Department's Regional Compliance Team. If the licence is subject to an Order, it is not in good standing until written confirmation is obtained from Compliance advising of any resolution of the Order. If the Order remains in effect, the licence is not in good standing.

4. (b) Is there an outstanding complaint that may result in compliance or enforcement action?

If yes, the licence is not in good standing. Provide appropriate documentation.

4. (c) Is the licence subject to a prosecution, administrative penalty, civil matter or EAB appeal?

If yes, the licence is not in good standing. Provide appropriate documentation.

5. Is the licensed project in compliance with the terms and conditions of the licence under review?

Staff must very closely review the actual wording of the licence to determine the specific terms and conditions that the licensee must comply with. If the project is not in compliance with the terms and conditions of the licence, then the licence is not in good standing.

Staff may conduct a field inspection to evaluate the project. Attach a copy of the inspection report. An amendment or other action may be required before the licence will be considered in good standing.

1. *Determine whether the existing works are capable of diverting the full licensed allocation - (WA Section 54(1)(a)(vii)).*

    (a) *Constructed works are as shown on approved plans and the existing works are capable of diverting water.*

    (b) *Reservoir area/capacity/structures (if applicable) are as shown on approved plans and are capable of operating accordingly.*

2. *Point of diversion is as shown on approved plans - (WA Section 54(1)(b)(vi)).*

3. *Point of use is as shown on approved plans -(WA Section 54(1)(b)(v)).*

4. *Capacity or rate of diversion meets licensed maximum –(WA Section 54(1)(b)(i) or (ii))*

5. *Any additional project specific conditions, which are included in the licence terms and conditions - (WA Section 142 (1)(e)).*

6. *Is the licensee the landowner? If not, written consent from the landowner is required. Are consents to affect other lands current and valid? This should include access to the point of diversion, adjacent lands, road allowances, use of works agreements, conveyance agreements, etc.*

7. *Is submission of a water use return a condition of the licence and have these reports been received? If the condition requires that water use information is recorded and retained, water use information will be requested. Overuse of water may initiate compliance measures (WA Section 142(1)(e)). Water use reports must be compared to inspection reports on file.*

8. *Is the licensee in compliance with the timing of the diversion as stated on the licence? (ie: Is diversion allowed during flood stage only?) (WA Section 54(b)(iv)).*

9. *Is the licence used for the purpose stated on the licence? (WA Section 142(1)(e)).*

CERTIFICATION STATEMENT

Based on a review of records in File No.'_____', on this date Licence No. (*Use EMS Approval Number)* is in good standing.

_____ _____

Reviewer's Signature Date

Based on a review of records in File No. '_____', on this date, Licence No. (*Use EMS Approval Number)* is NOT in good standing.

_____ _____

Reviewer's Signature Date